



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

August 8, 1991

Robert A. MacLean, M.D.
Acting Commissioner of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR91-356

Dear Dr. MacLean:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID#12811.

You have received a request for a document which contains "additional recommendations" pertaining to a complaint of racial discrimination that was filed with the Department of Health by a Department employee. Specifically, the request asks for a document entitled "Additional Recommendations" which is attached to the "Equal Employment Opportunity Panel Report." While the "EEO Panel Report" was released to the complainant, the "Additional Recommendations" document was withheld.

Based upon earlier open records decisions issued by this office, Open Record Decision Nos. 464 (1987), 222 (1979); 192 (1978), you assert that the document entitled "Additional Recommendations" is excepted from required public disclosure by section 3(a)(11) of the Open Records Act. That section excepts

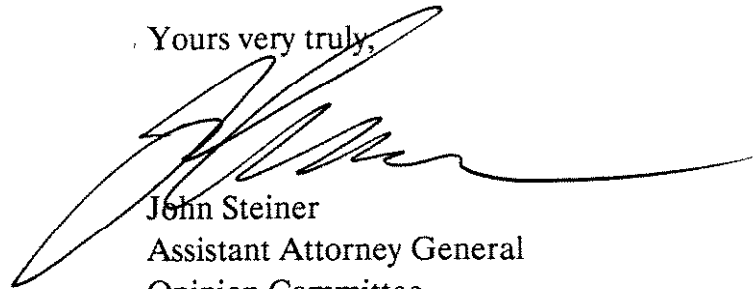
inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

The test under section 3(a)(11) is whether interagency or intra-agency information consists of advice, opinion, or recommendation that is used in the deliberative process. Facts and written observation of facts and events, when such information is severable from advice, opinion, or recommendation, cannot be withheld under section 3(a)(11). *See generally* Open Records Decision No. 213 (1978).

We have considered the exception you claimed, specifically section 3(a)(11), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 556 (1990), a copy of which is enclosed, resolves your request. We have marked the severable portion of the document at issue which contains facts and written observation of facts and events. This information is *not* excepted from disclosure by section 3(a)(11), but the record of opinions and recommendations contained in the remaining portion of the document may be withheld under that section.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-356.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/GK/lb

Ref.: ID# 12811

Enclosure: Open Records Decision No. 556

cc: Raymond Haywood
Department of Health
1100 West 49th Street
Austin, Texas 78756-3199